

THE COLUMBIA ASSOCIATION,	*	BEFORE THE
PETITIONER	*	PLANNING BOARD OF
	*	HOWARD COUNTY, MD
PLANNING BOARD CASE NO. 394	*	

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**DECISION AND ORDER**

On July 12, 2012, the Planning Board of Howard County, Maryland, in accordance with Section 125.E.4 of the Howard County Zoning Regulations, held a public hearing to consider the petition of The Columbia Association for approval of a Final Development Plan for Downtown Revitalization (FDP-DC-MSW-1, Merriweather-Symphony Woods Neighborhood Phase 1) for proposed future parkland improvements, including a network of pathways, a fountain, a shared use pavilion, a shared use amphitheater, a shared use café, play activity area, woodland garden area, parking within a 16.1 acre project area zoned New Town (NT) and designated as Downtown Parkland per the Downtown Columbia Plan. The subject site is part of a larger 33.94 acre parcel located on the south side of Little Patuxent Parkway between South Entrance Road and Broken Land Parkway, opposite of the Mall Entrance Drive in the Fifth Election District of Howard County, Maryland, identified as Tax Map 36, Grid 1, Parcel 452, Lot 23. As part of this petition for Downtown Revitalization, the Planning Board also considered for approval the Merriweather-Symphony Woods Neighborhood Concept Plan, the Merriweather-Symphony Woods Neighborhood Specific Design Guidelines and the Merriweather-Symphony Woods Neighborhood Specific Implementation Plan as proposed by the Petitioner in accordance with Section 125.E.3 of the Zoning Regulations.

The notice of the public hearing was published and the subject property was posted in accordance with the Planning Board's requirements, as evidenced by certificates of publication and posting, all of which were made a part of the record of the case.

Pursuant to the Planning Board's Rules of Procedure, the reports and official documents pertaining to the Petition were incorporated into the record of the hearing, including the proposed Final Development Plan (FDP-DC-MSW-1), the proposed Merriweather-Symphony Woods Neighborhood Concept Plan, the proposed Merriweather-Symphony Woods Neighborhood Specific Design Guidelines, the proposed Merriweather-Symphony Woods Neighborhood Specific Implementation Plan, the Howard County Code, the Downtown Columbia Plan (a General Plan Amendment), the Howard County Zoning Regulations, the Downtown-wide Design Guidelines, the Adequate Public Facilities Act, the Howard County Design Manual (Volume 3, Chapter 4), the Howard County Sign Ordinance, the Technical Staff Report of the Department of Planning and Zoning, and the reports of the responding reviewing agencies.

G. Scott Barhight, Esq., represented the Petitioner, the Columbia Association. Petitioner presented testimony and exhibits as detailed below through three witnesses. Five individuals testified in opposition to the petition and two testified in favor of the petition. A list of exhibits introduced into evidence by the Petitioner at the hearing is attached to this Decision and Order as Attachment 1. Also included on Attachment 1 is a list of Protestant Exhibits.

After careful evaluation of all the evidence accepted into the record, the Planning Board makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. Jill Manion-Farrar of the Department of Planning and Zoning (“DPZ”) summarized DPZ’s Technical Staff Report, which found conformance of the proposed Plans and Neighborhood Specific Design Guidelines with the Downtown Columbia Plan and the Downtown-Wide Design Guidelines and recommended approval of the proposed Final Development Plan, FDP-DC-MSW-1, the proposed Merriweather-Symphony Woods Neighborhood Concept Plan, the proposed Merriweather-Symphony Woods Neighborhood Design Guidelines, and the proposed Merriweather-Symphony Woods Neighborhood Implementation Plan, as submitted, subject to compliance with the Subdivision Review Committee (SRC) comments. There are no substantive changes to the neighborhood features from what was described and exhibited in the Downtown Columbia Plan.

In response to a question by Planning Board Chairperson David Grabowski regarding Parkland Replacement for the area that will be developed with parking, Ms. Manion-Farrar deferred to the petitioner to discuss the agreement between the Columbia Association and the Howard Hughes Corporation.

The Planning Board finds that the Department of Planning and Zoning’s determination that the Petitioner met the criteria for approval of the Final Development Plan pursuant to Section 125E.4. of the Zoning Regulations, based on its submissions and modifications pursuant to Section 125E.3. of the Zoning Regulations, to be persuasive, and adopts DPZ’s report as its own in making the findings of fact and conclusions contained in this decision.

2. Ms. Jan Clark, Landscape Architect for the Columbia Association, testified first for the Petitioner. Mr. Barhight entered Ms. Clark’s curriculum vitae as Petitioner’s Exhibit #1, a hand-out of the Final Development Plan set as Petitioner’s Exhibit #2, and a copy of a PowerPoint Slide describing

the vision for Symphony Woods Park as Petitioner's Exhibit #3. Ms. Clark testified to her familiarity with the Downtown Columbia Plan and the vision for the Merriweather-Symphony Woods Park as a place to celebrate art, music and nature. She testified that Symphony Woods was envisioned as a major park since the 1960s, and that its development was part of a 1990s master plan, but that discussions on how the park might be developed and better utilized did not begin until 2008-2009 and that the planning process has included extensive community involvement. She testified that parking is not a permitted use in Downtown Parkland, and that the Columbia Association and the Howard Hughes Corporation entered into a signed agreement that has been submitted to the County which details land that will be deeded to the Columbia Association to ensure there is no net loss of Downtown Parkland acreage. Finally, Ms. Clark testified to the envisioned programming for the park to engage the community and bring vibrancy to the park, how the planning for the park will be coordinated with Howard Hughes Corporation's redevelopment plans for the Merriweather Post Pavilion, and that park development will occur in phases.

3. Mr. Charlie Bailey, Landscape Architect at Mahan Rykiel, testified next for the Petitioner. Mr. Barhight entered Mr. Bailey's PowerPoint Presentation as Petitioner's Exhibit #4 and Mr. Bailey's curriculum vitae as Petitioner's Exhibit #5. Mr. Bailey testified that the concept of the Symphony Woods Park was a softer, less intensive green area within the Merriweather-Symphony Woods neighborhood, and the Merriweather Post Pavilion will serve as a more urbanized entertainment center. He testified that Symphony Woods is a quiet respite and one of two large, important amenities for downtown, but that it is currently underused and the plan seeks to create more opportunities to slowly incorporate more use of the land. He testified to the evolution of the plan to reduce the amount of

grading required, provide opportunities for shared uses between Symphony Woods and Merriweather Post Pavilion, and to reduce the feeling of remoteness for proposed gathering areas. Finally, Mr. Bailey summarized the Phase I improvements and the vision of different areas over the long-term development of the park, and how planning has been around many natural resource constraints.

In response to a question from Planning Board member Bill Santos regarding how the pathways will draw people into the park and the remoteness of the proposed fountain and children's play area, Mr. Bailey stated the pathways and the view corridors, and elements such as art and the café will become "a known" as Downtown Columbia grows, which will draw people and encourage walkability. Furthermore, Mr. Bailey answered the remoteness will be a matter of timing and as the park is more built out, uses will become more centralized. If remoteness is still a concern, there are other areas that can accommodate a play area.

In response to a question from Planning Board member Bill Santos regarding how many people are anticipated to use the park on a daily basis, Mr. Bailey responded that no number of daily users has been estimated, and that it will be partly in response to Columbia Association programming and will certainly increase over time.

In response to questions from Planning Board member Josh Tzucker regarding the coordination between Merriweather Post Pavilion and Symphony Woods Park, what discussions there have been regarding the existing barns becoming shared use, and if the Merriweather Pavilion can remain opened year-round to encourage flow and use by the public, Mr. Bailey responded that the Symphony Woods design team has seen the Merriweather Post Pavilion master plan and says the barns may be re-developed and is not yet sure if they will accommodate any type of dual use. Mr. Tzucker then made a statement to be cautious of adding a third amphitheater to the Downtown area.

In response to a question from Mr. Rex Carpenter regarding the number of trees to be removed, Mr. Bailey stated that the current design predicts a worst-case scenario of 64 trees to be removed within the 16.1 acre project area, and that tree removal within the area of Merriweather Post Pavilion has not been looked at yet.

4. Mr. Tony Olsen, Professional Civil Engineer for Whitman Requardt testified next for the Petitioner regarding stormwater management for the site and stated that even with the soil compaction from festivals over the years, the site has been well maintained and erosion is not currently a significant issue. Mr. Olsen explained the new Stormwater Management requirements, and testified that an Environmental Concept Plan has been approved for the site which included porous pavement for the parking spaces and a submerged gravel wetlands was included as part of stormwater management.

In response to a question from Planning Board member Bill Santos regarding erosion and a dry creek bed at the northeastern portion of the site, Mr. Olson stated the creek area will be better addressed when a site development plan is proposed within this area of the park.

5. Wendell Thompson, of Columbia, MD, on behalf of Joyce Potemkin and the People of the Trees, read a letter from Ms. Potemkin that was included as part of a presentation package entered as Protestant Exhibit #1, and testified in opposition of the proposed plan because too many trees are proposed to be removed. He testified that an alternative plan has been created (included in Protestant Exhibit #1) that removes only 12 trees which should be considered since Symphony Woods is the last stand of natural trees and the only open space in Downtown Columbia. Mr. Thompson testified that children have named three trees for pioneers of Columbia and will continue to name 50 trees. He testified that the Columbia Association plan should be rejected and that alternative plans should be considered.

6. Rex Carpenter, of Columbia, MD, testified in opposition of the proposed plan. He testified that he has enjoyed the trees in many walks to the Merriweather Post Pavilion, and that there are already many fountains in Columbia which are turned off. He testified that no trees should be removed and the park should be geared to picnickers, walkers, and cyclers but without man-made pathways, except for big events.

7. Joan Lancos, of Columbia, MD, testified generally in support of the Merriweather Symphony Woods Final Development Plan and agreed with staff recommendations but indicated several concerns with the plan as it stood. She testified that while access to the park will be increased with the proposal, there is not information on how there will be a year-round draw into the park. Ms. Lancos also testified that the proposed pathway system was too formal and did not consider the existing vegetation and rolling topography, and that there should be a consideration of how the neighborhood will be viewed from all angles, including from adjacent residences overlooking the site. Finally, Ms. Lancos testified that connections to the surrounding areas and to Merriweather Post Pavilion need to be strengthened and that there should be a digital sign at Little Patuxent Parkway which announces the shows at Merriweather Post Pavilion.

Planning Board member Bill Santos asked Ms. Lancos that since the plan is currently at Final Development Plan, shouldn't a general pathway configuration be sufficient. In response, Ms. Lancos stated that the plan has not considered its connection with adjacent neighborhoods enough and that while Columbia Association may not need parking, the issue of parking for Merriweather Post Pavilion must be considered as Downtown redevelops. Overall, there has not been enough thought put into the overall design.

8. Rhonda Spiro, of Columbia, MD, testified in opposition of the proposed plan and read a letter written by a local teacher (included in Protestant Exhibit #1) and urged the plan be rejected in order to preserve the existing mature trees, which have more beneficial impacts to the environment and wildlife than twice as many young trees. Ms. Spiro testified that Symphony Woods should remain as a naturalized park and a place for serenity in an urban environment.

9. Holly McFarland, of Columbia, MD, testified in opposition of the plan because she is concerned with the proposed tree removal. Ms. McFarland testified that there were already too many impervious areas, the mature trees provide more environmental benefits, and that while designing around the trees and existing topography may be more expensive, it is worth it.

10. George Barker, of Columbia, MD, testified on behalf of “Bring Back the Vision” in support of the proposed final development plan. Mr. Barker testified that this is an opportunity to build an extraordinary park and attract users through classes and meandering paths that lead to new surprises for visitors. Mr. Barker suggested that language limiting the building program for Symphony Woods to restrooms, storage or maintenance-related structures and a possible café be removed from the Neighborhood Design Guidelines.

11. Peter Lay, of Columbia, MD, testified in opposition of the proposed plan. Mr. Lay testified that in an effort to protect the trees in the park, he and his siblings have named three trees for Toby Orenstein, the Bastler family, and Alan Kennedy with the hope that additional trees will be named.

12. In response to the public testimony regarding the preservation of the existing trees, Planning Board Chairperson Dave Grabowski asked Charlie Bailey if there has been an assessment of the trees within Symphony Woods Park. Mr. Bailey responded that 400 trees were assessed in the project area based on health and other various geometrics. Planning Board member Bill Santos asked Mr. Bailey



how trees deemed not in good condition would be affected by the project. Mr. Bailey responded that there are less than 10 trees assessed as in poor condition, and less than 10 trees assessed in fair condition. Any trees deemed to be in poor condition would be removed, and trees in fair condition that are within pathway alignment, near grading activities, or within an area planned for increased use would also be removed. Trees that were assessed as in fair condition and not near proposed grading may remain in place. As stated in Findings of Fact 3, that total number of trees to be removed due to the proposed pathway configuration (which may be classified in excellent, good, fair, or poor condition) is currently estimated to be no more than 64 trees.

13. The Board finds that the Petitioner has established that its proposed Final Development Plan satisfies all the criteria of Section 125E.4.a. through o., and the Board makes the following findings of fact on these criteria based on the evidence in the record, including the evaluations, findings and conclusions of the DPZ as contained in its Technical Staff Report, which the Board adopts as its own, as provided below:

1. a. The Neighborhood Concept Plan, the Neighborhood Specific Design Guidelines, and the Neighborhood Specific Implementation Plan (“the Neighborhood Documents”) generally conform with the Downtown Columbia Plan, including the Street and Block Plan, the Neighborhoods Plan, the Maximum Building Heights Plan, the Primary Amenity Space Framework Diagram, the Street Framework Diagram, the Bicycle and Pedestrian Plan, and the Open Space Preservation Plan based on the Petitioner’s exhibits and DPZ’s Technical Staff Report, all of which the Board finds convincing. The Board anticipates that the Neighborhood Concept Plan will evolve based on the continuing communication and coordination between the Columbia Association and Howard Hughes Corporation regarding how to maximize the features proposed within the neighborhood to create a unique cultural and community focal point. The Board makes these findings in recognition

of the fact that pursuant to Section 125E.3.a. of the Zoning Regulations that the Neighborhood Documents are only binding on property included within the boundaries of Final Development Plan FDP-DC-MSW-1, and only provides a context for evaluation of the initial FDP and guidance for future FDP petitions. The Board also makes its findings of conformance for this criterion of FDP decision-making based on the requirements of Section 125A.2.b.(1)-(6) of the Zoning Regulations.

b. The Merriweather-Symphony Woods Neighborhood Design Guidelines, which were modeled after the Downtown-Wide Design Guidelines but with the changes as noted in the DPZ Technical Staff Report, offer sufficient detail regarding urban design, architectural design, amenity area design, green building and site design, pedestrian and bicycle circulation features, and signage that will guide the appearance of the neighborhood over time and promote design features that are achievable and appropriate for Downtown Revitalization based on the Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing. The Board finds that the Design Guidelines should be revised to further promote the preservation of as many trees as possible by adjusting the grading and alignment of paths. The Board makes these findings, after considering the Design Advisory Panel's recommendations and Petitioner's incorporation of those recommendations, as noted in Attachment B to DPZ's Technical Staff Report.

c. This Final Development Plan conforms with the Neighborhood Concept Plan, Neighborhood Design Guidelines, and Neighborhood Implementation Plan submitted with this Final Development Plan, which provide a context for evaluation but are only binding on properties within the boundaries of the Final Development Plan, FDP-DC-MSW-1. The Board makes these findings based on the Petitioner's Exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing. FDP-DC-MSW-1 is not subject to the Revitalization Phasing Plan since no housing, commercial or hotel use is proposed, or the Downtown Community Enhancements Programs, and

Public Amenities (CEPPA) Implementation Chart, per Section 125.A.9.f.(2)(e)(iii) of the Howard County Zoning Regulations.

d. The Final Development Plan does not propose any housing, employment or commercial uses. However, the plan proposes arts and cultural uses that will balance and enhance the mix of housing, employment and commercial uses that are anticipated in each phase of Downtown Redevelopment, based on the testimony of Ms. Clark and Mr. Bailey as summarized in finding of facts 2 and 3, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

e. The Final Development Plan is not subject to the affordable housing requirement since no housing is proposed.

f. The Final Development Plan includes proposed bicycle and pedestrian features and expands upon the Bicycle and Pedestrian Circulation Plan in the Downtown Columbia Plan, providing connections within this neighborhood and to adjoining neighborhoods based on the testimony of Ms. Clark and Mr. Bailey as summarized in finding of facts 2 and 3, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing. The pedestrian and bicycle network proposed on this Final Development Plan (FDP) conforms with the Neighborhood Concept Plan.

g. The Final Development Plan does not propose any impacts to lakes, streams or rivers, floodplains or steep slopes on the subject property, and proposes connections between Symphony Woods Park and Merriweather Post Pavilion, as well as to the surrounding neighborhoods, as summarized in finding of fact 2 and 3, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing. The Board indicated that as the Howard Hughes Corporation continues to develop plans for the renovation and enhancement of the Merriweather Post Pavilion property as an arts and entertainment center, they would like to see Columbia Association and Howard Hughes Corporation work together to provide opportunities for shared uses and cross access.

h. The Final Development Plan, FDP-DC-MSW-1 consists entirely of Downtown Parkland, and is not required to provide Downtown Community Commons.

i. The Final Development Plan, FDP-DC-MSW-1, was found by the Planning Board to be substantially in harmony with existing and planned vicinal land uses based on the testimony of Ms. Clark and Mr. Bailey as summarized in findings of fact 2 and 3, petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing. Of particular concern in public testimony is the loss of existing trees within Symphony Woods Park to accommodate proposed formal paths. Based on this testimony and their own deliberations, the Board finds that the petitioner should consider existing topography and vegetation, and adjusting paths to meander around healthy trees to increase the number of trees that may remain. The Board finds that it is important to increase usage of the park, but that it is also important to preserve as many mature trees as possible since the park will serve as the primary natural area within Downtown Columbia. The Board also emphasized the need for the development of Symphony Woods Park to coordinate with the redevelopment of Merriweather Post Pavilion and that the Petitioner should work to improve connections with all the surrounding downtown neighborhoods.

j. The development proposed by the Final Development Plan, FDP-DC-MSW-1 will be served by Adequate Public Facilities as detailed in the Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing. The proposal warrants no improvements to the road network. There are no Adequate Public Facilities requirements for schools since no housing is proposed.

k. There are no environmental features such as streams, wetlands or steep slopes existing within the project area or disturbed by the development proposed by this Final Development Plan based on the testimony of Mr. Bailey as summarized in finding of fact 3, Petitioner's exhibits and DPZ's

Technical Staff Report, all of which the Board finds convincing. Environmental restoration will be provided in a subsequent phase.

l. The development proposed by the Final Development Plan does not impact any historic or culturally significant buildings or structures or public art. Symphony Woods Park is a culturally significant site which will be maintained and enhanced through the proposed improvements, and will remain a prime site for cultural and community events. The Board finds that site development plans should maximize potential interaction with Merriweather Post Pavilion with shared use facilities and cross access between the sites, and that concepts employed in the park should increase opportunities for year-round use. The Board finds that connections to and synergy with the surrounding downtown area should be emphasized in future submitted site development plans.

m. The Petitioner will incorporate art within Symphony Woods Park as required in Section 125.A.9.f.2 of the Zoning Regulations as noted on the Plan in General Note #7 on Sheet 3 as well as within the Neighborhood Design Guidelines which designates the entire park as the location of potential placement of public art, and based on the testimony of Ms. Clark and Mr. Bailey as summarized in Findings of Fact 2 and 3, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

n. The Final Development Plan provides a plan to hold, own, and maintain in perpetuity land intended for common quasi-public amenity use and public art that is not publically owned through the continued ownership by Columbia Association, which as acts as steward of community owned open space in Columbia, as summarized in testimony by Ms. Clark and DPZ's Technical Staff Report, all of which the Board finds convincing.

o. As a Final Development Plan for Downtown Parkland, there is no requirement to establish membership in the Downtown Partnership and calculating annual charges since Downtown

Parkland is not subject to CEPPA requirements and there are no commercial uses proposed. The Columbia Association will be represented within the Downtown Partnership Board of Directors.

### **CONCLUSIONS OF LAW**

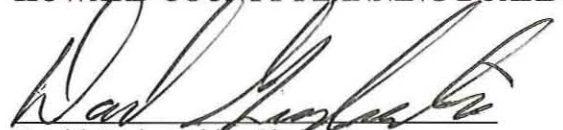
The Petitioner has satisfied all of the criteria for the consideration of Final Development Plan petitions to be considered by the Planning Board in accordance with Section 125.E.4 of the Howard County Zoning Regulations based on the Board's findings of fact provided above and as outlined in the Technical Staff Report of the Department of Planning and Zoning. Therefore, in accordance with the testimony given and evidence in the record and based on the Findings of Facts and Conclusions of Law for Planning Board Case No. 394, the petition of Columbia Association for approval of Merriweather-Symphony Woods Neighborhood Design Guidelines, the Merriweather-Symphony Woods Neighborhood Implementation Plan, the Merriweather-Symphony Woods Neighborhood Concept Plan, and Final Development Plan FDP-DC-MSW-1 is this 6<sup>th</sup> day of September 2012,

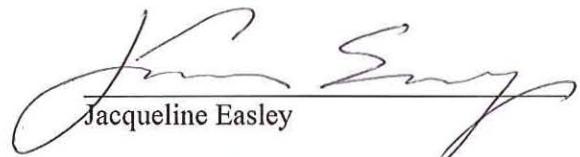
**APPROVED** by the Planning Board of Howard County, subject to the following conditions:


1. The Neighborhood Design Guidelines are to be revised to further emphasize preservation of existing trees by routing pathways around healthy trees and minimizing grading.
2. The Neighborhood Concept Plan is to be revised to add a general note stating that the Neighborhood Concept Plan is anticipated to evolve based on continuing coordination between Columbia Association and Howard Hughes Corporation regarding a shared vision and design for Merriweather-Symphony Woods as a unique cultural and community amenity. Future Site Development Plan submissions should include updated information on development of a coordinated plan for the neighborhood and which facilities will involve shared use.


3. The Final Development Plan is to be revised to add a general note stating that tree removal shall be minimized by aligning paths around healthy trees and minimizing grading.
4. The Final Development Plan is to be revised to add a general note stating that the Site Development Plan submission for the Shared Use Amphitheater should provide information on the types of events and programming envisioned.

**HOWARD COUNTY PLANNING BOARD**

  
David Grabowski – Chairperson

  
Jacqueline Easley

  
Bill Santos

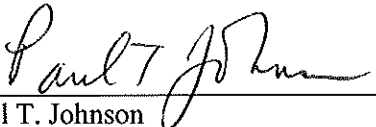
  
Josh Tzucker

  
Paul Yelder

ATTEST:

  
Marsha McLaughlin  
Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:  
HOWARD COUNTY OFFICE OF LAW  
MARGARET ANN NOLAN, COUNTY SOLICITOR

  
\_\_\_\_\_  
Paul T. Johnson  
Deputy County Solicitor



**Attachment 1**

**LIST OF PETITIONER'S EXHIBITS**

**PB-394 (FDP-DC-MSW-1), Downtown Columbia, Merriweather-Symphony Woods**

1. Curriculum Vitae for Janet Clark, R.L.A., Columbia Association
2. Copy of FDP-DC-MSW-1, which includes the Neighborhood Concept Plan
3. Copy of PowerPoint slide describing potential programming at Symphony Woods Park
4. Copy of PowerPoint presentation by Columbia Association witness Charlie Bailey
5. Curriculum Vitae for Charlie Bailey, R.L.A., PLA, and ASLA, Mahan Rykiel
6. Curriculum Vitae for Anthony Olsen, PE, Whitman Requardt and Associates, LLP

**LIST OF PROTESTANT'S EXHIBITS**

1. Presentation Package and Alternative Plan by "Preserve the People's Trees"
2. Letter of testimony by Joan Lancos
3. Letter of testimony by Holly McFarland
4. Page 46 of Neighborhood Design Guidelines highlighted by George Barker for edit suggestion